

1 THE HONORABLE JOHN C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TIFFANY HILL, individually and on behalf
11 of all persons similarly situated,

12 Plaintiff,

13 v.

14 XEROX BUSINESS SERVICES, LLC, a
15 Delaware Limited Liability Company,
16 LIVEBRIDGE, INC., and Oregon
17 Corporation, AFFILIATED COMPUTER
18 SERVICES, INC., a Delaware
19 Corporation, AFFILIATED COMPUTER
20 SERVICES, LLC, a Delaware Limited
21 Liability Company,

22 Defendants.

NO. 2:12-CV-00717-JCC

DECLARATION OF PATRICK M.
MADDEN IN SUPPORT OF
STIPULATED MOTION FOR COURT
APPROVAL OF PROPOSED CLASS
NOTICE AND NOTICE PLAN

23 I, Patrick M. Madden, hereby state and declare:

24 1. I am a partner in the law firm of K&L Gates LLP and counsel for Defendants
25 XEROX BUSINESS SERVICES, LLC, LIVEBRIDGE, INC., AFFILIATED COMPUTER
26 SERVICES, INC., AFFILIATED COMPUTER SERVICES, LLC (and their successors) in the
above-captioned matter. I have knowledge of the facts set forth in this declaration and am
competent to testify thereto.

1 2. In October 2019, Defendants provided Plaintiff's counsel with a class
2 list that contains 5,772 employees who fall within the Court's class definition. The
3 following is an explanation for how that list was established.

4 3. In June 2013, Defendants provided Plaintiff with two lists, one that
5 reflected all terminated and another that reflected all current Washington call center
6 or ABC-related employees as of that time. Those lists were provided prior to this
7 Court's ruling on class certification and thus included all employees at Washington
8 call centers regardless of whether they were paid under an ABC compensation plan
9 that used minutes as a unit of production. This Court's ruling denying certification for
10 off-the-clock work claims and allowing certification of an ABC class narrowed the
11 scope of employees within the class.

12 4. For purposes of narrowing the list of employees who met this Court's
13 class definition and to whom class notice should be sent, Defendants combined the
14 two original lists and then removed individuals based on the following criteria:

- 15 a. Anyone who did not work in Washington State;
- 16 b. Anyone who was terminated before June 5, 2010;
- 17 c. Anyone who was hired after September 27, 2012, and signed the
18 new DRP agreement;
- 19 d. Anyone who never received ABC pay – employees were paid
20 hourly in training and many did not work long enough to transition to ABC pay;
- 21 e. Anyone who did not receive ABC pay on or after June 5, 2010;
- 22 and
- 23 f. Anyone who did not work under an ABC plan that used minutes
24 as a unit of production – some call centers' ABC plans (e.g., Kent Travelocity) paid by
25 the call or other non-minute metrics or paid commissions.
- 26

1 5. In addition to an earlier declaration from Christina Fuhr that was filed
2 with the Court in 2013, at Plaintiff's counsel's request, Defendants provided a
3 supplemental declaration documenting the 2012 DRP plan and process that this
4 Court ruled excluded employees hired after September 27, 2012. Defendants
5 identified a few employees in Washington who were hired after creation of the 2013
6 lists; who opted out of and did not sign the 2012 DRP; and who worked under an
7 ABC plan that used minutes as a unit of production. These employees were added to
8 the final class list.

9 6. Todd Nunn and I provided a detailed explanation to Plaintiff's counsel of
10 how Defendants applied each of these criteria and how they arrived at the final class
11 list of 5,772 employees. The criteria and their application to employees on the original
12 lists provided to Plaintiff's counsel in 2013 can be verified with information and data
13 provided by Defendants to Plaintiff in discovery.

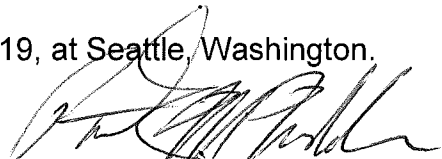
14 7. If records left any doubt about whether an employee fell within the class
15 definition, in an abundance of caution, Defendants included all such employees from
16 covered locations who received ABC pay during the relevant period even if some of
17 those employees may not have worked under ABC plans that used minutes as a unit
18 of production and others may not have received ABC pay using minutes as a unit of
19 production. Although Defendants have included such employees in the class list for
20 purposes of notice, Defendants reserve the right to later challenge the inclusion of
21 these employees in the class.

22 8. Defendants cooperation in generating the employee list for purposes of
23 sending notice to the class in no way waives their objection that class certification is
24 not warranted in this case, that individuals are subject to defenses that bar their
25 claims or their participation in this proceeding, and that individuals have no valid
26 claims and have suffered no damages.

1 9. More specifically, as explained to Plaintiff's counsel, Defendants
2 included individuals in the class list whose claims (Defendant has and will contend)
3 are barred because (1) they elected to pursue their claims to finality in the *Douglas*
4 and/or *Amedee* matters; and/or (2) they signed pre-2012 arbitration agreements that
5 (under the Supreme Court's *Lamps Plus* decision) require individual arbitration.
6 Defendants specifically reserve the right to raise those issues despite the individuals
7 being sent notice and will move for relief regarding those individuals at the
8 appropriate time.

9 I declare under penalty of perjury under the laws of the United States and the
10 State of Washington that the foregoing is true and correct.

11 DATED this 13TH day of November, 2019, at Seattle, Washington.

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14 Patrick M. Madden, WSBA #21356
15 Counsel for Defendants
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